

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA BALDASSARE A/K/A JOSEPH
J. BALDASSARE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56468

FILED

JAN 13 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Joshua Baldassare's motion to correct an illegal sentence/motion to strike lifetime supervision requirements. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Baldassare first contends that the district court erred by denying his motion to correct an illegal sentence because the offense which he was convicted of, battery with intent to commit a crime, is not an enumerated sexual offense under NRS 179D.097, and he is therefore not subject to registration as a sex offender under NRS 179D.460 or lifetime supervision pursuant to NRS 213.1243(1) and was illegally sentenced to those requirements.

Baldassare asserts, and the State does not contest, that the judgment of conviction states that he was convicted of battery with intent to commit a crime pursuant to NRS 200.400 and does not specify which subsection he was convicted under.¹ It is clear from the criminal


¹The judgment of conviction is not included in either party's appendix.

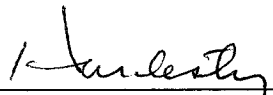
information, the guilty plea agreement, and the district court's statement at sentencing, however, that Baldassare was charged with, and convicted of, a violation of subsection 4, battery with intent to commit sexual assault. See Law v. State, 292 S.W.3d 277, 280 (Ark. 2009) (where judgment of conviction did not specify the subsection defendant was convicted of the court looked to the class of the felony and record to make a determination); accord Bennett v. Florida Parole & Probation Com'n., 422 So. 2d 1016, 1017 (Fla. Dist. Ct. App.1982); cf. Shepard v. United States, 544 U.S. 13, 20-21 (2005) (where a judgment of conviction does not specify the manner in which a defendant committed a prior burglary, and such information is necessary to determine the consequences of the conviction, the court may look to the charging document, the plea agreement, and the plea canvass to determine the circumstances of the prior conviction). At the time of his offense, NRS 176.113, now codified as NRS 176.0931, required that a person convicted of battery with intent to commit sexual assault be sentenced to lifetime supervision. Thus, as conceded by Baldassare at the hearing on his motion, Baldassare was properly sentenced to lifetime supervision. Further, Baldassare's claim that he was not subject to sex offender registration fell outside the narrow scope of claims permitted in a motion to correct an illegal sentence. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (explaining that a motion to correct an illegal sentence may only challenge the facial legality of the sentence—either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum). Accordingly, we conclude that the district court did not err by denying his motion to correct an illegal sentence on this basis. We note that to the extent the district court addressed and denied the motion as a motion to strike lifetime supervision requirements, we lack jurisdiction to

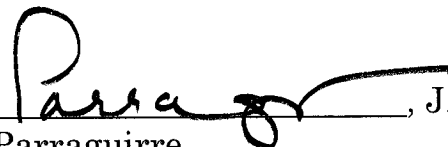
consider the order on appeal. See Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990).

Second, Baldassare contends that the district court erred by denying his motion because the conditions of supervision violate the Ex Post Facto Clause, the Double Jeopardy Clause, and the Contracts Clause of the Nevada and United States Constitutions, and well as due process and the “prohibition against vague and ambiguous laws under the U.S. Constitution.” We conclude that the district court did not err in denying the motion to correct an illegal sentence on this basis because Baldassare’s claim fell outside the scope of claims permitted in a motion to correct an illegal sentence. See Edwards, 112 Nev. at 708, 918 P.2d at 324. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

²Although this court has elected to file the appendix filed by Baldassare, we note that it fails to comply with NRAP 3C(e)(2)(C) and 30(c)(1) because the pages are not paginated sequentially. Counsel for Baldassare is cautioned that failure to comply with the appendix requirements in the future may result in it being returned, unfiled, to be correctly prepared, see NRAP 32(e), and may also result in the imposition of sanctions, see NRAP 3C(n).

cc: Hon. Michelle Leavitt, District Judge
Robert M. Draskovich, Chtd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk